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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

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prevent clearly unwarranted
invasion of personal privacy

JAN 22 2002

File: LIN 00 200 52562 Office: Nebraska Service Center Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer consulting firm with 16 employees and a gross annual income of \$1 million. It seeks to employ the beneficiary as a programmer analyst for a period of two years and six months. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. Counsel acknowledges that the evaluation service company that furnished an evaluation of the credentials of the beneficiary does not have the authority to grant college credit. Counsel states that its evaluation, however, shall still stand to satisfy the documentation requirements of the regulations.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

3. Evidence that the alien qualifies to perform services in the specialty occupation. . .

A credentials evaluation service found the beneficiary's foreign education to be the equivalent of a Bachelor of Business Administration with an additional concentration in Computer Programming from a regionally accredited university in the United States.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of SEA, Inc., 19 I&N Dec. 817 (Comm. 1988).

Despite the evaluator's findings that the beneficiary's educational and employment backgrounds are equivalent to a bachelor of business administration degree with an additional concentration in computer science, the record does not contain any corroborating evidence to support such a claim such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. 214.2(h)(ii)(4)(D)(1).

The record shows that the beneficiary was awarded a "Bachelor of Commerce degree (in income tax and cost accountancy)" from Nagarjuna University in India in 1995. However, a review of the transcript submitted indicates that the beneficiary completed no computer courses at the University. The record shows that he attained the equivalent of one year of study in the field of computer programming from three schools in India named Baba Computers and Systems, Prabhala Hi-Tech Enterprises Pvt. Ltd. and Vasisthta Infotech. Therefore, the beneficiary is not qualified to work in a specialty occupation as a programmer analyst on the basis of education alone.

For the purpose of determining equivalency to a baccalaureate degree in a field related to the job offered in this case, three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the alien lacks. Here, the beneficiary needs nine years of experience in the specialty occupation to qualify.

The petitioner claims that the beneficiary had been employed by two firms in qualifying positions in India beginning in August 1996. Accepting the petitioner's assertion, the beneficiary had attained less than nine years of qualifying experience in the field of computer science at the time the visa petition was filed in June 2000. Therefore, the visa petition may not be approved. See: 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.